SIAO BEE YEW v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.) March 4, 1966]

[Sibu — Criminal Appeal No. 2 of 1966]

Criminal Law and Procedure — Binding over — Necessity of complying with procedure — Criminal Procedure Code (Sarawak Cap. 58), ss. 70 - 78.

In this case the magistrate issued an order for the appellant to appear before him. When the appellant admitted quarrelling with another person, the magistrate ordered her to execute a bond to keep the peace and be of good behaviour for a period of six months. She appealed.

Held: the proceedings were irregular in this case and the order should be quashed.

Case referred to:—

(1) *Jong Chat* v. *Reg.* [1956] S.C.R. 13.

CRIMINAL APPEAL.

George Seah Kim Seng for the appellant.

Frank Ngui (A.S.P.) for the respondent.

Lee Hun Hoe J.: This is an appeal against the order of the Sibu Police Court dated 6th January, 1966.

Instead of issuing a summons an order was made directing the appellant to appear in the police court. The trial magistrate recorded that the appellant admitted that she was guilty of quarrelling with another person who was not even present in court. Thereupon the trial magistrate ordered appellant to execute a bond to keep the peace and be of good behaviour for a period of six months in her own surety of $50. It is against this order that appellant appealed.

Special procedure for cases of this nature can be found in the Criminal Procedure Code, particularly sections 70 to 78. A perusal of the record of the lower court indicates that the procedure was not complied with. No evidence was recorded by the trial magistrate. How could he bind appellant over unless he was satisfied on evidence that appellant was likely to commit a breach of the peace. I agree entirely with the following passage of the judgment of Bodley J. in *Jong Chat* v. *Regina* [1] at page 14:—

"As the exercise of magisterial powers under section 72 (now section 71) of the Criminal Procedure Code may well result in the interference with the liberty of the subject, these powers must be exercised strictly in accordance with the law."

Although there was no charge against the appellant it would appear she was asked to plead. There is no necessity for framing any charge but a proper inquiry should be held. The record does not show that the nature of the proceeding was explained to appellant.

In my view these irregularities are serious enough to occasion a failure of justice. I allow the appeal and quash the order of the lower court requiring the appellant to execute a bond. I order that the appellant be discharged.

Appeal allowed.

THAM KOK CHEONG & ANOR. v. LOW PUI HENG

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) and Tan Ah Tah F.J.) March 16, 1966]

[K.L. — Federal Court Civil Appeal No. 97 of 1964]

Partnership — Sale by majority of partners to limited company — Whether binding on minority.

In this case there were four partners carrying on business. Three of the partners purported to sell the partnership business as a going concern to a limited company, formed by them. The fourth partner was not aware of what had taken place, until April 6, 1958, when she was informed by one of the other partners that the partnership business had been converted into a limited company and she no longer had any shares in the partnership business. She therefore commenced an action against the three partners and the limited company. At the trial it was held ([1965] 1 M.L.J. 212) that the acquisition and taking over of the partnership business was void and that the company should account to the plaintiff for her share in the partnership. The first and fourth defendants appealed against this decision.

Held: (1) as the plaintiff had not consented to the sale of the partnership business and was not aware of such sale till April 6, 1958, the purported sale of the business was ineffective and the partnership must be deemed to be in existence till April 6, 1958, when the plaintiff was informed of its dissolution;

(2) there must be a direction for accounts to ascertain the amount due as her share of the partnership to the plaintiff.

Case referred to:—

(1) *Chapple* v. *Cadell* 37 E.R. 953.

FEDERAL COURT.

S. D. K. Peddie for the appellants.

C. H. Smith (*T. K. Sen* with him) for the respondent.

Cur. Adv. Vult.

Tan Ah Tah F.J.: The plaintiff and the first, second and third defendants were partners in a firm which carried on business under the style of King Chong & Co. The fourth defendant is a company formed by the first, second and third defendants for the purpose of acquiring the partnership as a going concern.

The fourth defendant was incorporated on the 25th August 1953. At the first directors' meeting which was held on the 1st November 1953 it was resolved that the company should commence trading as from the 1st January 1954. The first, second and third defendants were the directors who attended this meeting. Three applications for shares, made by the directors themselves, were considered and 299 shares were allotted to each of them "as fully paid shares for a consideration other than cash," such allotment